

House Bill 1251

By: Representatives Fleming of the 117th, Shaw of the 176th, and Martin of the 47th

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 1 of Title 15 and Code Section 17-12-127 of the Official Code of Georgia Annotated, relating to the general provisions of courts and representation and appointment of alternative attorneys in capital cases, respectively, so as to change matters relating to cases in which the death penalty is sought; to change certain provisions relating to requesting judicial assistance from other courts; to change certain provisions relating to senior judge status and requesting assistance of senior judges; to change certain provisions relating to senior judges of the state court, probate court, or juvenile court and requesting assistance of a senior judge; to change matters relating to the appointment of counsel in death penalty cases; to change matters relating to payment of attorney's fees and expenses in capital cases in which the death penalty is sought; to provide for related matters; to provide an effective date and applicability; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 1 of Title 15 of the Official Code of Georgia Annotated, relating to the general provisions of courts, is amended by adding a new subsection to Code Section 15-1-9.1, relating to requesting judicial assistance from other courts, to read as follows:

"(n) Notwithstanding the provisions of this Code section, a senior judge shall not be assigned, designated, or preside in any criminal case involving a capital offense for which the death penalty may be imposed."

SECTION 2.

Said chapter is further amended by adding a new subsection to Code Section 15-1-9.2, relating to senior judge status and requesting assistance of senior judges, to read as follows:

"(e) Notwithstanding the provisions of this Code section, a senior judge shall not be assigned, designated, or preside in any criminal case involving a capital offense for which the death penalty may be imposed."

SECTION 3.

Said chapter is further amended by adding a new subsection to Code Section 15-1-9.3, relating to senior judges of the state court, probate court, or juvenile court and requesting assistance of a senior judge, to read as follows:

"(g) Notwithstanding the provisions of this Code section, a senior judge shall not be assigned, designated, or preside in any criminal case involving a capital offense for which the death penalty may be imposed."

SECTION 4.

Code Section 17-12-127 of the Official Code of Georgia Annotated, relating to representation and appointment of alternative attorneys in capital cases, is amended by revising subsection (b) as follows:

"(b)(1) If for any reason the there is a conflict of interest such that the office is unable to defend any indigent person accused of a capital felony for which the death penalty is being sought, the ~~presiding judge of the superior court in which the case is pending~~ council's director shall determine and appoint counsel to represent the defendant. The council's director shall establish the contractual agreement with the defendant's counsel for payment of representing the defendant, and, when feasible and prudent, a flat fee structure shall be utilized.

(2) A maximum of two attorneys shall be paid by the council at an hourly rate established by the council with state funds appropriated to the council for use by the office. State funds shall be appropriated to the council for use by the office for the first \$150,000.00 paid for each death penalty case. Funding for attorney's fees and expenses between \$150,000.01 and \$250,000.00 for each death penalty case shall be paid through state appropriations for 75 percent of such attorney's fees and expenses, and the county governing authority shall pay 25 percent of such attorney's fees and expenses. Funding for all attorney's fees and expenses in excess of \$250,000.00 for each death penalty case shall be paid through state appropriations for 50 percent of such attorney's fees and expenses, and the county governing authority shall pay 50 percent of such attorney's fees and expenses. The trial judge may appoint not more than one additional attorney to represent the defendant; provided, however, that such attorney shall be paid by the county governing authority with county funds at a rate established by the council. The council with the assistance of the office shall establish guidelines for payment of attorney's fees and expense requests.

(3) A county governing authority may provide supplemental compensation to appointed counsel. The presiding judge may appoint not more than one additional attorney to

1 ~~represent the defendant, provided, however, that such attorney shall be paid by the county~~
2 ~~governing authority with county funds at a rate established by the council."~~

3 **SECTION 5.**

4 This Act shall become effective on July 1, 2008, and shall apply to all cases filed and all
5 costs and fees incurred for counsel appointed on or after July 1, 2008.

6 **SECTION 6.**

7 All laws and parts of laws in conflict with this Act are repealed.